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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: RONALD J. BOSER
FOR: A REMOVABLE BRASSIERE CUP SUPPORT
SERIAL NO.: 09/944,612
FILED: September 4, 2001
EXAMINER: Gloria M. Hale, Patent Examiner, Art Unit 3765

#9
#2
6-5-2

BRIEF OF APPLICANT

RECEIVED

Hon. Commissioner of Patents
and Trademarks
Washington, DC 20231

AUG 22 2002
TECHNOLOGY CENTER R3700

Sir:

Applicant appeals the Final Rejection of March 26, 2002, and herewith submits

BRIEF OF APPLICANT and the appeal brief fee of \$160.

1. Real Party in Interest

The applicant above named.

2. Related Appeals or Interferences

None.

3. Status of Claims

There is one claim on appeal as set forth in Appendix A.

4. Status of Amendments After Final Rejection

A reply to the Final Rejection was made on May 7, 2002 amending the claim of Appendix A to place the claim in condition for allowance or in better condition for consideration on appeal. The claim of this Reply, in clean form and in a marked up version, is set forth in Appendix B.

The examiner did not provide an advisory opinion as to whether the claim of Appendix B has been entered of record.

It should be noted of record that applicant respectfully requests that the Board consider the claim of Appendix B as the claim on appeal.

5. Summary of Invention

The claim on appeal covers a brassiere that provides a user with two fashion options. As will be explained, one option is with firm underwire breast support and some attendant discomfort, and the other with a "natural" look but which requires that the underwire support be removed.

In Fig. 1, there is shown a brassiere, generally designated 10, having right and left breast cups 12 and 14 worn by a user 16 with over the shoulder straps 18 and 20 positioning the brassiere cups in covering relation over her breasts 22 and 24, the use of Fig 1 being typical and one in which the user 16 will be understood to have exercised an option to have breast cup supports 26, often referred to in the parlance of the trade as underwires, although not confined to metal construction material. For its intended end use, each breast cup support 26 is of a U-shape as illustrated, and of U-shape-imparting construction material. The in-use option of Fig. 1 is one in which a strip of a VELCRO loop-type fastener 28 is attached by being sewn, as at 30, to a fabric U-shape trim 32, itself being sewn, as at 30, in encircling relation about the bottom of a cooperating breast cup 12, 14, in a central location, as illustrated.

Cooperating with the VELCRO loop-type fastener 28, and as best understood from Figs. 3 and 4, there is provided for each breast cup 12, 14, a

fabric casing 36 in which there is disposed a shape-imparting support 38 in a U-shape, as illustrated, in assembled relation using a seam, as at 40, attaching also to the fabric casing 36 a strip of a VELCRO hook-type fastener 42 so that the VELCRO hook-type fastener 42 is in facing relation, as denoted by the dash lines 44, to the VELCRO loop-type fasteners 28 permanently sewn to the rear surface 46 of the brassiere 10. As understood, established contact of the strips of VELCRO loop-type fasteners 28 and VELCRO hook-type fasteners 42 with each other will hold throughout normal use of the brassiere 10 thus providing the user 16 with breast support.

The user 16, according to the present invention, also has the option of manually removing the VELCRO hook-type fastener 42 with its attached fabric-encased U-shape support 38 from its operative position occupied during its in-use condition of Fig 1 during which it was attached to the VELCRO-loop type fastener 28. In practice, the wearing of the brassiere 10 without the breast supports 38 satisfies fashion demands and thus, the two options provided contribute to the utility of the brassiere 10.

As explained at application page 3, starting in line 5, "...it is an essential aspect of the invention that [it is the] VELCRO loop-type connection [that is] used on the back of the brassiere because the removal of the underwire exposes the closed ends or loops of this connector which, because they are not of a skin-sticking nature, are not a source of discomfort."

6. Issue pursuant to 37 CFR 1.192(e)(6)

The sole issue is whether the claim on appeal under 35 U.S.C. 103(a) is unpatentable over Fairbanks et al.

7. Grouping of Claims

Grouping does not apply.

8. Argument pursuant to 37 CFR 1.192(c)(8).

In the non-final Office Action of 12/07/01 the examiner indicated the basis upon which she believed the claim of Appendix A was not allowable over Fairbanks et al., to which applicant responded in an 8 page reply of December 19, 2001 making of record arguments why the claim was allowable, to which the examiner repeated verbatim the basis of rejection of the non-final Office Action and also, more pertinent to the proper disposition of this appeal, has taken a position as to what cited Fairbanks et al. is to be credited with in making an anticipatory disclosure to be factored into the decisional process.

As to the arguments repeated verbatim by the examiner in the two Office Actions, applicant responds by repeating its arguments made of record on December 21, 2001 and respectfully requests that the Board consider said arguments as if fully set forth in this brief. As to the examiner's position on the anticipatory disclosure to be credited to cited Fairbanks et al. however, applicant now fully responds in expressing disagreement.

Argument

On appeal is a claim reciting two wearing or fashion options for a brassiere. At application page 1, third paragraph, it is clearly stated:

“Underlying the present invention ... is the recognition that providing optimum support coincident with breast-supporting means is of course one option, but that providing nominal support is also another option and satisfies fashion demands, as occurred during the no-bra fashion trend of former years.”

Fashion is clearly not in mind in Fairbanks et al. in the disclosure at col. 1, lines 3-7, 40-43 that the underwire 30 and sheath 25 can be removed for cleaning/laundrying and other purposes, the latter most likely being of a kindred nature to laundrying, such as ironing.

At col. 2, lines 1-10, the possibility of wearing a wired or a wireless brassiere is disclosed, but the wireless version is certainly attainable not by removal of the sheath/underwire assembly, but more simply by merely taking the underwire 30 out of the sheath 25 through the end opening through which the underwire central loop portion 31 projects upwardly and outwardly from the sheath 25 (at col. 3, lines 73, 74). The wearing of the brassiere with a wireless sheath is of questionable value as providing a simulated no-bra fashion appearance because of tell-tale bulk of the sheath still in place beneath the breast area of the garment front.

What is significant about the shortfall of the disclosure of Fairbanks et al. is two-fold.

FIRST: Fairbanks et al. is explicit in disclosing the use of male and female snaps for the attaching and removal function and it is the examiner not Fairbanks et al., who reads this disclosure in the patent as not being of any critical import but only as exemplary of what can be used for the conversion between

wired and wireless versions. Thus the examiner "takes official notice that it is well known to substitute different types of fasteners for each other such as snaps for hook and loop fasteners" but it is otherwise disclosed in Fairbanks et al. as follows:

"This sheath assumes the same shape as tape 20 and it is provided with a plurality of male snap fastening members 26 spaced in accordance with the spacing of the female snap fastening members 21. It will be understood that these male and female snap fastening members are adapted to coact with each other so that the sheath may be detachably secured to the tape by means of said snap fastening members.

* * *

The snap fastening elements 26 are attached, however, to the tape material 27, since that is a stronger material and it faces the tape 20." (at col. 3, starting in line 36)

Thus, in Fairbanks et al. not only is the disclosure explicit as to the use of male and female snaps, but the patentee provides explicit instructions as to how the male and female snaps are to be used.

As any user of the brassiere will attest, the aligning of the spaced apart male and female snaps, irrespective of where the female/male snaps are positioned, is considerably greater than attaching/removing face-to-face VELCRO loops and hooks, and thus involves a substantive matter unresolved by the examiner's Official Notice.

SECOND: It is important to note by comparison of the final rejection with the prior non-final Office Action that the examiner has withdrawn her 112 objection in the non-final Office Action to the use in the claim of the designation

VELCRO as "indefinite". In doing so, it is conceded that VELCRO is a definite structural recitation. Thus, the remaining VELCRO loops on the brassiere "attached in an outwardly facing relation...and in an interposed position between said brassiere and an upper torso of a wearer of a brassiere" after the U-shape and fabric casing are removed, are claim structures not disclosed by Fairbanks et al. and, on the issue of anticipation, are limitations of a claim that must be considered, as held in In Re Hiniker Co., 150 F. 3d 1362, 1369, 47 USPQ 2d 1523, 1529 (Fed. Cir. 1998), i.e., the reference to the proposition "the name of the game is the claim", which appears on the cited page of Hiniker.

For the foregoing reasons, it is submitted that the claim on appeal is allowable over the cited Fairbanks et al. patent.

It is respectfully requested that the rejection of the claim on appeal be reversed.

Respectfully,

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Dated: August 14, 2002

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Commissioner of Patents and Trademarks, Washington, D.C. 20231, on 8/14/02.

Dated: 8/14/02 J. Ann Dickie

1. A construction for optional first and second uses of right and left breast cup supports for a brassiere attached in supporting relation respectively in surrounding relation about a bottom of a cooperating breast cup using VELCRO hook-type and VELCRO loop-type fasteners, said construction comprising for each breast cup a U-shape of shape-imparting construction material serving as each said cup support, a fabric casing in covering relation about said U-shape, a VELCRO hook-type fastener in a strip configuration attached to said fabric casing, and a VELCRO loop-type fastener in a strip configuration attached in an outwardly facing relation in an operative location in surrounding relation about a bottom of a cooperating breast cup and in an interposed position between said brassiere and an upper torso of a wearer of said brassiere, said strips of VELCRO hook-type and VELCRO loop-type fasteners in an exercise of a first option having operative positions in face-to-face contact with each other incident to providing breast cup support to said wearer of said brassiere, and whereby removal of said attached cup support in an exercise of a second option exposes said VELCRO loop-type attached strip which is characterized by a nominally felt presence to the touch contributing to comfort in the wearing of the brassiere.

CLEAN VERSION

1. A first and second construction for right and left breast cup supports for a brassiere attached in supporting relation respectively in surrounding relation about a bottom of a cooperating breast cup using VELCRO hook-type and VELCRO loop-type fasteners, said first and second construction comprising for each breast cup a U-shape of shape-imparting construction material serving as each said cup support, a fabric casing in covering relation about said U-shape, a VELCRO hook-type fastener in a strip configuration attached to said fabric casing, and a VELCRO loop-type fastener in a strip configuration attached in an outwardly facing relation in an operative location in surrounding relation about a bottom of a cooperating breast cup and in an interposed position between said brassiere and an upper torso of a wearer of said brassiere, said strips of VELCRO hook-type and VELCRO loop-type fasteners having operative positions in face-to-face contact with each other incident to providing breast cup support to said wearer of said brassiere, and only in said second construction a removal of said attached cup support which exposes said VELCRO loop-type attached strip which is characterized by a nominally felt presence to the touch of said second construction contributing to comfort in the wearing of the brassiere.

MARKED UP VERSION

1. A first and second construction for [optional first and second uses of] right and left breast cup supports for a brassiere attached in supporting relation respectively in surrounding relation about a bottom of a cooperating breast cup using VELCRO hook-type and VELCRO loop-type fasteners, said first and second construction comprising for each breast cup a U-shape of shape-imparting construction material serving as each said cup support, a fabric casing in covering relation about said U-shape, a VELCRO hook-type fastener in a strip configuration attached to said fabric casing, and a VELCRO loop-type fastener in a strip configuration attached in an outwardly facing relation in an operative location in surrounding relation about a bottom of a cooperating breast cup and in an interposed position between said brassiere and an upper torso of a wearer of said brassiere, said strips of VELCRO hook-type and VELCRO loop-type fasteners [in an exercise of a first option] having operative positions in face-to-face contact with each other incident to providing breast cup support to said wearer of said brassiere, and [whereby] only in said second construction a removal of said attached cup support [in an exercise of a second option] which exposes said VELCRO loop-type attached strip which is characterized by a nominally felt presence to the touch of said second construction contributing to comfort in the wearing of the brassiere.